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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.36437 of 2003
and
W.P.M.P.Nos.43753 of 2004 & 10658 of 2019

D.C.Mangalraj
Sole Prop:
Kumaran Bricks Works
V Block
24, Mogappair East
Chennai 50 ...Petitioner

Vs.

1.State of Tamilnadu, rep.
by its Secretary to Government
Revenue Department
Chennai-9

2.The Competent Authority
Urban Land Ceiling and Asst.
Commissioner of Urban Land Tax
Poonamallee, chennai-56

3.The Special Commissioner
and Commissioner for land
Reforms, Chepauk, Chennai-5

4.The District Collector
Thiruvallur District
Thiruvallur ... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the entire records pertaining to the issue of the impugned order of the 2nd respondent, in R.C.No.C.5424/88 dt. 23.10.2003 served on the petitioner on 07.01.2004 and quash the same as illegal, arbitrary, without jurisdiction and consequently forbearing the respondents 1 and 2 from in any manner interfering with the petitioner's lawful possession of the lands comprised in S.No.38/1, 41 and 42 etc., of an extent of 21 acres 50 cents, at Ayanambakkam Village, Ambattur Taluk, Thiruvallur District.

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For Petitioner : Mr.P.B.Balaji

For Respondents : Mr.J.Ramesh, AGP

ORDER

The writ petition has been filed by the petitioner to issue a writ of Certiorarified Mandamus, to call for the entire records pertaining to the issue of the impugned order of the 2nd respondent, in R.C.No.C.5424/88 dt. 23.10.2003 served on the petitioner on 07.01.2004 and quash the same as illegal, arbitrary, without jurisdiction and consequently forbearing the respondents 1 and 2 from in any manner interfering with the petitioner's lawful possession of the lands comprised in S.No.38/1, 41 and 42 etc., of an extent of 21 acres 50 cents, at Ayanambakkam Village, Ambattur Taluk, Thiruvallur District.

2.The case of the petitioner is that the petitioner was owning about 21.5 acres of agriculture lands comprised in S.Nos.38/1, 41 and 42, Ayanambakkam Village, used for brick works. The lands are agricultural in nature and was used for brick industry purpose. The subject lands do not fall under the purview of the definition of urban land and the same is evident from the revenue records. The petitioner was in continuous and uninterrupted possession of the subject lands for the past several decades. The petitioner has also applied for exemption on 30.09.1983 and 06.09.1989. The 3rd respondent without considering the case on merits rejected the application for exemption under Section 21 of Tamilnadu Urban Land Ceiling and Regulation Act, 1978. Aggrieved by the said rejection, the petitioner filed W.P.No.13035 of 1991 and this Court. This Court while entertaining the writ petition by its order dated 24.12.1991 granted interim stay and restrained the respondents from interfering with the lawful possession of the subject lands. Thereafter, the said case was transferred to the Special Tribunal, Santhome and the Tribunal by its order dated 27.06.2000 dismissed the TRP 189/1999 in view of the repeal of the original Act by Repeal Act 20/1999 with effect from 16.06.1999. However, till date the physical possession of the subject land is with the petitioner and the said physical possession is confirmed from the date of Interim stay granted by this Court to till date. The petitioner after the Repeal Act sold several pieces of land to various persons on various dates and as on date the petitioner is in possession of the remaining extent only. However, the impugned order is pertaining to 21 acres and 50 cents and being the original owner and vendor, the petitioner is obliged to protect their valid and legal possession and rights. While being so, even after the Repeal Act, the authorities proceeded the matter and passed an impugned

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order under Section 12(6) of the Tamilnadu Urban Land (Ceiling and Regulation) Act 24 of 1978 and called upon the petitioner for enquiry and for awarding of compensation, against which, the present writ petition came to be filed.

3.Mr.Balaji, the learned counsel appearing for the petitioner would submit that though the Act was repealed on 16.06.1999 by the Repeal Act 20 of 1999, in several cases the rights of the innocent land owners were protected. Further, the State Government also passed a G.O.Ms.No.111 dated 03.03.2007, protecting the innocent land owners. Even thereafter the respondent proceeded with the matter and awarded compensation, which is unsustainable.

4.The learned counsel for the petitioner would further submit that in respect of taking possession under Section 11(5) and 11(6) is not followed in the present case. Wherever the respondent intend to take possession under Section 11(5), they have to issue notice to the petitioner through R.P.A.D. After receipt of the notice, when the petitioner voluntarily surrenders the possession then the authority can take possession under Section 11(5) of the Act. If the petitioner fails to surrender the possession, the authority is entitled to take possession forcibly by invoking 11(6) of the Repeal Act. The said procedure was not followed, which is a clear violation of Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978. The very same issue has been dealt by the Division Bench of this Court that when the physical possession is not taken from the land owner and procedure contemplated under Section 11(5) and 11(6) not followed, the Repeal Act will apply and the proceedings taken earlier will stand abated and accordingly dismissed the appeal preferred by the State. The learned counsel relied upon the decision of this court held in W.P.No.22045 of 2007 (Sarasammal V. The State of Tamil Nadu, rep. by Secretary to Government, Revenue Department and another). The relevant portion is extracted hereunder:

> "Since in all these writ appeals, which are 27 in number, a common question of interpretation of the relevant provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999 has to be answered, they have been heard together and answered by this common judgment. All these appeals arose out of separate judgments delivered by learned single Judge in various writ petitions filed by aggrieved land owners. Almost all the writ petitions have been allowed mainly on the ground that physical possession of the lands continued with the land owners or the persons claiming through them. The factual details of each case have been discussed in the latter

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part of this judgment.

33.The phrases shall be deemed to have been acquired and shall be deemed to have been vested absolutely in the State Government occuring in Section 11(3) of the Act, in our considered opinion, mean that the right, title and interest in respect of the land shall be deemed to have been vested in the State Government and not possession of the land. After the right, title and invested is vested in the State Government by notification under Section 11(3), the State Government has to take further action for taking possession of the land, if the land owner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in the Government.

34.There are cases where after notice under Section 11(5) of the Act, the land owner delivers possession of the land and acknowledges the same in writing and the State, after taking possession of the land so delivered voluntarily by the land owner, either comes into possession of the same or allots those lands to other persons, then in such cases, even thereafter, if the land owner or any person claims to be in possession of those lands, then we have no hesitation in holding that continuance of such possession even after surrendering or delivering the land to the State is illegal possession and they shall be treated as encroachers.

35.However, there are cases where although the competent authority issued the notice under Section 11 (5) of the Act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owner or the person in possession fails to deliver the land and continues to be in possession of such land and the authority of the State did not take action under Section 11(6) of the Act for taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands.

In this appeal, the initial of the land owner was wrongly mentioned in the notice and there was no attempt to serve either the petitioner, who was the real owner of his authorised representative, and the service was carried out on a third party. The records in this case reveal that the notice under Section 11(5) was served by way of affixture, for which there was no

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explanation. Moreover, there was no record to show that there was actual delivery of possession after taking over the land by the respondents. In the absence of adherence to the statutory procedure in taking over the land from the petitioner and in the absence of proper service of notice, the proceedings stood abated. The order of the learned single Judge needs no interference. The appeal is, therefore, dismissed.

5.The learned Additional Government Pleader would submit that though the acquisition proceedings under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 is initiated in the year 1981, the petitioner did not dispute the initial notice in respect of 7(2) and other proceedings. However, the petitioner is disputing the procedure for taking possession and further the G.O. Ms.No.111 dated 03.03.2007 issued by the Government is not applicable in the present case. The G.O.Ms.No.111 applicable only to the innocent purchasers who purchased the property from the original owner. The petitioner is the Original owner who received the notice. After receiving the notice, the petitioner himself should come before the authorities for surrendering the possession. The respondents took possession on 21.05.1990 through delivery receipts and handed over the excess land to the Revenue Inspector, Maduravoyil Firka. When the possession was taken, the Repeal Act will not have any effect. Accordingly, prays for appropriate orders.

6.Records perused, which clearly indicates that the Tamil Nadu Urban Land (Ceiling and Regulation) Authority after following the procedures contemplated under act, issued a notification under Section 11(3) of the Act and allowed the authority to take possession under Section 11(5) of the Act. Accordingly, the authority issued notice through R.P.A.D. to one P.Vajravel, the Proprietor of Kumaran Bricks Works. The said notice was issued on 11.01.1984 and the same was sent through R.P.A.D. dated Nil. Further, the said notice was served on 19.01.1984. The acknowledgement card is available in the file, which reveals that the notice was received by one unknown person whose initial is G and the name starts with A and further no details of the person is given to whom the notice was served. Hence, this Court arrives to a conclusion that Rule 8 is not followed in the present case.

7.Hence, it is clear the official respondents have not followed the procedure contemplated under the Act when 11(5) notice was issued and possession is also not taken as per the

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procedure contemplated under Section 11(5) of the Act and the same is not a valid one. In the present case, though the records reveal that the possession was taken from the petitioner and handed over to the Revenue Inspector on 21.05.1990, however, the fact remains that the possession of the petitioner was protected by this Court right from the year 1991 to till date. Till now the physical possession is with the petitioner and further in the counter, the respondent has admitted that the physical possession is with the petitioner however that the petitioner is treated as the encroacher, the relevant portion is extracted hereunder:

> 13.With regard to the averments made in paragraph 7 of the affidavit it is submitted that possession of the petitioner has to be treated only as an encroachment in a Government land. The excess vacant land was acquitted from the then proprietor and the possession was handed over to the Revenue Authorities on 21.05.1990 by signing land delivery receipts.
>
> 20.When regard to the averments made in paragraph-10 of the affidavit, it is submitted that the orders passed under section 12(6) of the said Act are as per the provisions of the said Act. The possession of the excess vacant land acquired was handed over to the Revenue Authorities on 21.05.1990. The Repeal Act shall not apply to this case as per section 3(1) (a) of the Repeal Act.

8.The above averments in the counter affidavit makes it clear that the physical possession is with the petitioner and the same has not been taken by the respondents in the manner known to law by following 11(6) of the Act. So in view of the above, the entire Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 procedure stands abated and the petitioner is entitled to succeed by virtue of Repeal Act 20 of 1999.

9.The writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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and
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SVI(CO)
GN(24/07/2019)

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